On appeal, this ruling was affirmed, and the principle laid down that the rule of law which excludes confidential communications between husband and wife is not confined to the exclusion of either consort from the witness stand, or to the mere incompetency of either to divulge as a witness such confidences, but extends to the exclusion of proof of such communications in any manner whatsoever. In other words, communications made in the married relation are inherently incompetent as evidence, from motives of public policy.

There is much authority for the doctrine that letters between husband and wife, found in the possession of a third person, are not privileged, and Mr. Freeman, in his monographic note on the subject of privileged communications between husband and wife, in 29 Am. St. Rep. 411, 415, approves this as the better doctrine.

The rule adopted by the Florida court is more in keeping with the policy of the law to encourage the utmost confidence between husband and wife, whether in their oral or written communications.

The court cites as sustaining its views: *Wilkerson* v. *State*, 91 Ga. 729 (17 S. E. 990); *Bowman* v. *Patrick*, 32 Fed. 368; *Scott* v. *Com.*, 94 Ky. 511 (23 S. W. 219); *Reg.* v. *Parmenter*, 12 Cox Crim. Cas. 177; *Dreier* v. *Ins. Co.*, 24 Fed. 670; *Mahner* v. *Linck*, 70 Mo. App. 380; *Mitchell* v. *Mitchell*, 80 Tex. 101 (15 S. W. 705).

MUNICIPAL CORPORATIONS—LIABILITY FOR CONDITION OF JAIL.—In *Kelly* v. *Cook* (R. I.), 41 Atl. 571, it is held that a city is not liable for a wrongful arrest by a police officer, nor for negligent care of a prisoner while under arrest. On the latter point the court says:

"In the temporary care of persons under arrest, the city, by its police department, is aiding in the enforcement of the laws, and thus discharging a public duty, for which it receives no pecuniary benefit, and for the manner in which it discharges this duty it is legally responsible to no one. The police regulations of a city are not made and enforced in the interest of the city in its corporate capacity, but in the interest of the people. *Calwell* v. *Boone*, 51 Iowa, 687 (2 N. W. 614). Of course, it is to be presumed that the common dictates of humanity will prompt those in charge of the municipal affairs of a city to properly provide for persons under arrest; but that it should be held liable to an action in favor of a person who has been arrested, whether rightfully or wrongfully, on the ground that he has not received proper care and attention, is a doctrine which has not yet been incorporated into our municipal law. In the late case of *Gullikson* v. *McDonald*, 62 Minn. 278 (64 N. W. 812), it was held that a municipal corporation is not liable for negligently maintaining its lockup or prison in a defective and unfit condition, by reason of which a prisoner confined therein is injured. See also *Gilboy* v. *City of Detroit*, J. Smith's Cases Mun. Corps. 150; *City of Richmond* v. *Long's Adm'rs*, 17 Gratt. 375; Dill. Mun. Corp. (4th ed.), sec. 977, and cases in note; *Mitchell* v. *City of Rockland*, 52 Me. 118; *Brown* v. *Inhabitants of Vinalhaven*, 65 Me. 402.

"As we have been unable to find any authority to the contrary of the doctrine above announced, and as the plaintiff has not referred us to any, there seems to be no occasion for a further consideration of the question."

In 3 Va. Law Reg. 534, attention was called to the case of *Shields* v. *Durham*, 24 S. E. 794, in which the Supreme Court of North Carolina held, under similar circumstances, that the city was liable. As there shown, North Carolina seems to be the only State in which this view prevails.